

BEFORE THE HON'BLE 3RD ADDITIONAL SENIOR CIVIL
COURT, KADI

ORDER BELOW EXHIBIT – 5
IN SPECIAL CIVIL SUIT NO.22/2018

1. The plaintiff has instituted the suit valued at Rs.42,00,000/- for cancellation of sale deed, declaration and permanent injunction and during the pendency of the suit, filed the present application below Exh.5 under Order-39, Rule-1 and 2 and Sec.151 of the Code of Civil Procedure for interim injunction.
- 1.1 Brief facts of the present suit are that, the plaintiffs are holding joint ownership and possession of the property bearing Survey No.322/1, plot No.22 (out of total land of 5113 Sq.mtrs.) admeasuring 182 Sq. mtrs. , 17.25 sq.mtrs. built up area and 67 Sq. mtrs. and including the land area of common plot and area of road thereby, the land having total area of 249 sq. mtrs. and constructed area of 200 sq. mtrs. ground floor and first floor and stair cabin situated at 22, Soham Bungalows, sub-district : Kadi, District : Kadi (**Hereinafter referred it to as 'suit property' and / or 'suit land'**). Further, it is alleged by the plaintiff that, since last more than two years, the plaintiff No.1 is running business by the name of Shivani Sales and he has invested a huge amount to settle the business as he has set plaint to

sieve the sand at Detroj and carried out registration on his name and also settle various machineries and equipment and in all invested total rupees one crore. Later on, father of the defendant namely Jayantibhai came with his son and his son-in-law and determined to do partnership of 60-40% share in the business of the plaintiff and as per their determination, the defendant has to pay an amount of Rs.60,00,000/-, however, the defendant and his father and other relative, they all in total have paid an amount of Rs.14,02,000/- only by way of different cheques up to 08.07.2017 and the remaining amount of Rs.45,98,000/- is yet remained to be paid.

- 1.2 The plaintiff has alleged that, due to financial requirements and upon assurance given by the defendant's father namely Jayantibhai to reimburse the loan amount of the plaintiff, they have executed the sale deed of the suit property bearing No. 4436/17 on dated 30.08.2017 before the Kadi Sub-Registrar and assured the plaintiff to pay an amount of Rs.42,02,000/- within six months to the plaintiff at the time of handing over the possession of the suit property, but, the defendant has not paid the determined amount and such the sale deed is ab-initio void. The plaintiff has alleged that, due to his illness for a period of one month, the defendant and his relatives have grab the income earned by the partnership business and not shown any

transactions to the plaintiff and also grab the machinery of the plaintiff, consequently, the plaintiff has filed an application before the Detroj Police Station U/s. 420, 406 and as such the police has recorded plaintiff's statement on 20.03.2018. But the defendant has again assured to reimburse his loan and would execute sale deed of the house as against the machineries holding by the plaintiff. Thus, the plaintiff has executed sale agreement of the machinery in favor the defendant and withdrawn the application filed against the defendant before the Detrol Police Station. Under such circumstances, the plaintiff constrained to file the present suit seeking prayer to declare the sale deed bearing No. 4436 executed with respect to the suit property on 30.08.2017 be null and void, declaration with respect to the possession of the plaintiff in the suit property and also seeking prayer of permanent injunction against the defendant or through their persons, servants, agents or any other not to execute contract, agreement, deed and/or sale, transfer, change, alienate, mortgage or gift the suit property to any one and other relief as deems fit, proper and just in favour of plaintiffs, and it will take time to reach at the finality of the suit, therefore, during the pendency of the suit, the plaintiff has filed the present application below Exh.5 to get temporary injunction under Sec.151, Order-XXXIX, Rule-1 & 2 of C.P.C, 1908 against defendants. The plaintiffs have narrated the same contents in Exh.5 as

mentioned in the plaint, thus, with a view to avoid repetition of facts, the same have not been repeated here.

2. The plaintiff has produced documents vide D/list at Exh.3 as under : ~

Sr. No.	Description of Document	Mark
1	Copy of sale deed of the suit property	3/1
2	Copy of partnership deed executed between defendant's father and his relative	3/2
3	Copy of reply filed by the defendant and his relatives against the application filed before the Detroj Police station	3/3
4	Copy of sale agreement for Dumper on stamp paper of Rs.100/- on dtd. 19.03.2018	3/4
5	Copy of sale agreement for Dumper on stamp paper of Rs.100/- on dtd. 19.03.2018	3/5
6	Copy of sale agreement for Dumper on stamp paper of Rs.100/- on dtd. 20.03.2018	3/6
7	Copy of sale agreement for Dumper on stamp paper of Rs.100/- on dtd. 20.03.2018	3/7
8	Copy of sale agreement for Machine on stamp paper of Rs.100/- on dtd. 19.03.2018	3/8
9	Copy of sale agreement for Machine on stamp paper of Rs.100/- on dtd. 19.03.2018	3/9

- 2.1 The plaintiff has filed an application vide Exh.6 to appoint Court Commissioner to perform Panchnama of the suit property and accordingly, order has been passed as on 11.06.2018.
3. Upon receiving summons/notices, the defendant has remained present through the Ld. Advocate and filed written statement at **Exh.15** whereby averments of the suit as well as application below Exh.5 have been denied in toto. It is contended that the suit as well as injunction application of the plaintiff barred by the law of limitation. Also, suit as well as injunction application of the plaintiff are barred by the principles of delay, laches, estoppel and acquiescence.
- 3.1 It is contended that, before executing the registered sale deed with respect to the suit property bearing No.4436 on 30.08.2017, the plaintiff has executed sale agreement bearing No.921 as on 17.03.2017 before the Sub-Registrar, Kadi. Further, it is contended by the defendant that, he has paid an amount of Rs.16,37,000/- on various dates and the plaintiff has mentioned in the sale agreement regarding receipts of obtaining such amount. Further, it is stated that, to proceed for the title clearance certificate and to perform N.A. of the suit properties through the plaintiff, but, the plaintiff failed to do so. Further, it is contended by the defendant that, over and above

the amount paid to the plaintiff, the defendant has paid loan of the plaintiff which is amounting to Rs.25,63,000/- by way of demand draft being No. 011621 dtd.24.08.2018, thus, the defendant has paid total consideration amount of Rs. 42,00,000/- to the plaintiff. Thus, the plaintiff is not come before the Court with clean hand and misled the Court which are not binding to the plaintiff. Further, the defendant has contended that, the plaintiff has not adduced any proof regarding his averment of investment worth rupees one crore in plant, machinery, dumper, JCB etc. Further, it is contended by the defendant that, it is not the case of dissolution of partnership firm as said by the plaintiff regarding Shivani Sales and Aai Shree Khodiyar Traders. Further, the plaintiff No. 1 was managing transactions of their business and he has performed embezzlement and in fact an amount of Rs.1,48,93,549/- is due with the plaintiff to be paid to the defendant. Further, it is contended that, the plaintiff No.1 has served notice upon the defendant's father, brother-in-law and Sandipbhai on 04.04.2019, wherein it is stated about outstanding amount of Rs.66,00,000/- to be paid by the defendant's father, brother-in-law and Sandipbhai, as against such notice, the defendant has filed reply through the Ld. Advocate as on 21.05.2019 and also stated to take in to consider that reply in this case.

3.2 It is contended that, it is mentioned in the sale

deed which is executed before the Sub-Registrar that, the plaintiff has obtained the consideration amount from the defendant and as such there is no any outstanding amount towards the sale deed with respect to the suit property and the plaintiff has given receipt of such payment and in this regard, the defendant has requested to refer paragraph No.2, Page-3 of the sale deed. Further, it is mentioned in the sale deed that, the seller has handed over the possession of the suit property to the purchaser. That, the sale deed has been executed on 30.08.2017 and the present suit filed on 11.06.2018 i.e. after passing nine months whereby raised objection about the possession and consideration. The defendant has contended that, after execution of the sale deed and handed over the possession of the suit property to the defendant, the plaintiff illegally entered into the suit property and in this connection the defendant has filed complaint against the plaintiff before the Police Inspector, Kadi on 23.06.2018 bearing I-C.R. No. 131/18 U/s. 406, 418, 420, 447, 448, 452, 461, 462, and 114 of I.P.C. and after investigation the I.O. has filed chargesheet before the hon'ble Court on 19.07.2019 bearing Criminal Case No.943/2019 and as counter attack of the said complaint, the plaintiff has filed false complaint before the Kadi Police Station bearing I.C.R. No. 132/2018 on 25.06.2018, whereby, the District & Sessions Judge, Mahesana has enlarged anticipatory bail to

the defendant and other persons. Thus, the possession of the plaintiff is possession as trespasser. Further, it is contended that, the plaintiff is leading false facts about the accounts of the business of 'Sand' and also stated false facts about the expenses incurred for petrol, Diesel and repairing and maintenance of vehicles. Further, it is contended that, if the facts stated by the plaintiffs regarding hiding their machineries/vehicles and threats given by the defendant, then in such circumstances why the plaintiff has not proceed any legal procedure, is also taken into consideration. The defendant has contended that, plaintiff has produced affidavits of residents of Soham bungalows to prove the fact that, the plaintiff is residing with his family in the suit property since last many years, but, drafting of all such affidavits are one and the same and executed only before the one Notary as on 28.06.2018 and the said affidavits are Notarised after 17 days of filing the present suit and thereby the defendant has stated that the plaintiff has tampered the documents and denied reliability of all such affidavits. Further, the plaintiff has produced bills of UGVCL, receipt for the bill of Kadi Municipality, bill of Sabarmati Gas Co. Ltd. and certificate of President of his Society and stated that, the plaintiff has not stated at all these places about transfer of the suit property to the defendant by way of registered sale deed and

thereby suppressed the material facts from the members of the society to prove his possession on the suit property.

3.3 In nutshell, the defendant has contended that, the plaintiff has executed the registered sale deed bearing No.4436/2017 on 30.08.2017 in favor of the defendant after obtaining the entire consideration amount and after handing over the possession to the defendant, the plaintiff has illegally entered into the suit property, thus, the plaintiff has stated totally adverse facts than the facts stated in the sale deed and considering all such grounds, the plaintiffs are not entitled for the prayers sought in the suit as well as in the present application. Furthermore, the plaintiff has not paid adequate stamp fee and the plaintiffs have stated false facts on oath in the affidavit filed in support of the present application and also adduced irrelevant documents. The defendant has requested to reject the suit of the plaintiff with cost and also counter claimed for declaration and absolute and peaceful possession of the suit property and other reliefs which deems fit. The plaintiff has suppressed the material fact. By submitting the above mentioned facts, the defendant has contended that the plaintiff has filed the causeless suit and not came with clean hand before the Court, thus, if the injunction application passed in favor of the plaintiffs, then they have to suffer irreparable loss. Hence,

the suit of the plaintiff as well as injunction application of the plaintiff be deserved to be dismissed with cost.

3.3 The defendants have filed following documentary evidence vide D.E. List at Exh.16 : -

Sr. No.	Description of Document	Mark
1	Copy of sale deed of the suit property	16/1
2	Copy of complaint filed by the def. against the plaintiff bearing FIR NO.131/18	16/2
3	Copy of sale agreement of Machine No.GJ-02-AN-1001	16/3
4	Copy of payment details for Machine No.GJ-02-AN-1001	16/4
5	Copy of sale agreement of machine	16/5
6	Copy of payment details of machine	16/6
7	Copy of Rojmel for the payment details of machine	16/7
8	Copy of sale agreement of TATA HAIWA NO.GJ-02-XX-7229	16/8
9	Copy of payment details of machine	16/9
10	Copy of Rojmel for the payment details of machine	16/10

4. Heard and considered arguments advanced by the Ld. Advocate for the respective parties.

4.1 The Ld. Advocate for the defendant has filed

written arguments vide Exh.23 whereby narrated the facts of the written statement. The Ld. Advocate has submitted that, plaintiffs have no prima facie case, balance of convenience is in favor of the defendant and if injunction application will not be passed in the favor of the defendant, then they would have to face irreparable loss.

5. Considering the pleadings of parties and averments of defendants, the following issues are raised to decide the present Exh.5 application.

~ I S S U E S ~

- [1] Whether the plaintiff is entitled to get relief as prayed for?
- [2] What order & decree?
- [6] My answers of above issues are as under;
- [1] In the negative.
- [2] As per final order.

REASONS

7. **Issues NO.1 to 2 :**

All these issues are inter-connected with each other and in order to avoid repetition of the facts, all these issues are dealt and discussed together.

First of all I , reproduce the provision of the injunction herein below for- order 39 Rule 1-- **"Cases in which temporary injunction may be granted"**--Where in any suit it is proved by affidavit or otherwise-(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree,-or,

(b) that the defendant threatens, or intends, to remove or dispose of

his property with a view to defrauding-his-creditors,

(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may be order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or dispossession of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit] as the Court thinks fit, until tile disposal of the suit or until further orders.

Rule 2 Order XXXIX of Code of Civil Procedure 1908 "Injunction to restrain repetition or continuance of breach"

(1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensa-

tion is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgement, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract, or injury of a like kind arising out of the same contract or relating to the same property or right.

(2) The Court may be order grant such injunction, on such terms as to the of the durations injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

Now considering above provision with fact of the case on hand , As per the pleading , so far as the sub mission of the plaintiff side ,that in view of the above facts , it is required to noted that as per the pleading, plaintiff started the plaint for sand cultivation under the name of Shiwani - firm in which ,initially it was sole function and as per the say of plaintiff for requirement of money, plaintiff and other person who was relative of the defendant make the partnership firm, and with the object that he would get the money at less interest, and also for release of his personal loan, as per his say that , defendant father i.e partner of the firm SHIWANI “ say that they help them to release the loan, after executing the sale deed in

favor of the defendant , they mortgage the property in bank and borrow the money- on the property in question,

So due to promise of the father of the defendant he had executed a registered Sale Deed No.4436-2017 Dt.30-08-2017,, about the residential suit property to the defendant. Further it requires to be clarified that the plaintiff and the father of the defendant Shri Jayantibhai patel and other his relatives were partners in the firm.

Moreover, it is submitted by the plaintiff due to money requirement they made the partnership firm along with the defenendant father and relative, subsequently during the money transaction of the business, the father of the defendant and other partners had sold the vehicles of the plaintiff. Not only this, but to invest the money in firm- I SHREE KHODIYAR FIRM, which is run by the plaintiff and the father of the defendant, the plaintiff had executed the document of partnership firm which is at Mark 3/2, and in wh ich

property in question i.e Mark 3/2 also mentioned as place of partnership firm , which place is known the land in question i.e disputed property. now at this stage consider the pleading of the parties and more probably the plaintiff claim for the prima facie injunction application that, for release his loan ,defendant father assure him to execute the registered sale deed in favor of his son who is the defendant and after the execution of the sale deed , the deed in question mortgage in bank, and borrow money from bank use to release the loan of the plaintiff,

Regarding all these matters other side defendant deny the submission of the plaintiff , they submitted that in fact plaintiff want to sell the property and for in furtherance he also , prior to sale deed enter in to the contract for sale vide registered deed, not only plaintiff also given consent for the title clearance procedure for the property in question,

. In such circumstances preliminary the submission of the plaintiff that there was a partnership business and considering the need of money of the firm, the plaintiff has executed a registered Sale Deed with the defendant is not the convincing matter.

Moreover, regarding the , looking to the terms of the partnership firm which is at Mark 3/2 and in which plaintiff and relative of the defendant partner , if consider the terms then , pleading of the plaintiff and other side covenant of the partnership firm then, contribution of the amount from the partners is not match, further in addition if plaintiff submission that, the defendant and his relative they had given the undertaking to the plaintiff for the payment of loan amount after executing the sale deed in favor of the defendant and that registered sale deed, submit the custody of the bank for obtaining the loan for this , regard the plaintiff had executed the document regarding the suit property in the name of the defendant and in this regard the defendant received the loan which he has not paid to the plaintiff,

but the defendant should pay the installment of the said loan. But regarding such submission of the plaintiff, there is no any agreement or writing on the record of this case.

But at present if the title of the property is considered, it is with the defendant. In such circumstances regarding the exchange of money and the transactions done for the business, the residential house being suit property is transferred by executing the registered Sale Deed and creating charge upon it the plaintiff should pay the amount, all such matters are found not possible in ordinary transaction. In these circumstances it is necessary to record the evidence. Moreover, prima facie as the titles of the property are with the defendant, so this court does not believe that the plaintiff has a prima facie case.

There fore this court does not agree that this is a case fit for equitable relief like injunction order ,

Hence, I reply issues No.1 & 2 accordingly
in Negative I pass the following order.

:: ORDER ::

1. The present application - Exh.5 of plaintiff is hereby rejected .
2. The cost will be in the cause of suit.

Signed and pronounced in the open court on 30th

September ,2024

at Kadi.

Place:Kadi.

Date: 30 .09 .2024. (**Aniket Mahendra Kumar Shukla**)

[Code No.-GJ01139]

3rdAdditional Senior Civil Judge,

Kadi, District Mahesana.